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Kaitlyn Spear is a third-year law student at the Chapman University Dale E. Fowler School of Law. Before attending law school, she graduated Summa Cum Laude from the University of New Haven, earning a bachelor's degree in Criminal Justice. While in undergraduate school, she interned with the Downtown Evening Soup Kitchen in New Haven, CT, where she helped provide essential services to individuals experiencing homelessness. During law school, she worked as a law clerk for Berger Kahn and developed a passion for employment law. Currently, she is a Summer Associate at Jackson Lewis P.C. and a Senior Articles Editor for Chapman Law Review. With a strong commitment to social justice, Kaitlyn is eager to continue fostering conversations surrounding discrimination against people experiencing homelessness in the employment context. She recognizes the significance of creating inclusive work environments where everyone has an equal opportunity to thrive.



A Shelter for Homelessness: Rethinking Employment Discrimination and Protecting Housing Status

“Gentle Reminder: People experiencing homelessness deserve to experience the type of love that goes to battle alongside them, not against them.”

-Love Beyond Walls¹

I. INTRODUCTION

The job hiring process in the United States is ripe with barriers for those experiencing homelessness, including discrimination based on housing status.² Surprisingly, in California, there are currently no laws protecting individuals based on their housing status.³ This Note supports the contention that employers should not be allowed to “inquire[] about an applicant’s address or residency history until after granting a provisional offer of employment.”⁴ However, as this Note will argue, the solution proposed in *Ban the Address: Combating Employment Discrimination Against the Homeless* does not protect individuals experiencing homelessness from undergoing housing status discrimination later in the hiring process or after receiving an employment offer.⁵ The “Ban the Address” provision, modeled after California’s Ban the Box laws, only provides refuge during the “early stages of the application process.”⁶ Including housing status as a protected characteristic under California’s FEHA laws would prevent discriminatory hiring practices altogether and provide a remedy for individuals subjected to employment discrimination based on their housing status.

This Note proposes a partial solution to California’s homeless epidemic by prohibiting discrimination against those without housing, specifically in the employment context. Part II of this Note offers a statistical overview of homelessness in the United States, with a specific focus on the concerning rates in California. This Note is intended to inform readers of the homelessness crisis before proposing legal solutions. Part III provides the legal framework for current employment practices concerning housing status. This Note will start by

providing a general background on how discrimination is often a precursor to homelessness and how employers further discriminate based on applicants' and employees' housing status. Section B will set forth the current housing status protections, or lack thereof, for those experiencing homelessness in California. Then, the Note considers previously proposed legislation in California, including policy ideas such as "Ban the Address". Part IV will explain what it means to be a protected class. This section will also cover current efforts to address discrimination based on housing status. It will set forth the rationale for adding housing status protections to existing laws in California, specifically the FEHA. Part V considers what other jurisdictions in the United States have implemented to improve job security amongst populations undergoing homelessness and how California's proposed method would compare. Part VI briefly contemplates the potential societal impact of protecting housing status and concludes.

II. EXPLORING THE CURRENT LANDSCAPE: HOMELESSNESS STATISTICS AND TRENDS

Understanding homelessness statistics and trends offers a foundation for informed legal interventions. A 2014 survey conducted by the National Coalition for the Homeless discovered that 70.4% of those experiencing homelessness believed private businesses discriminated against them due to their housing status.⁷ On a federal level, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin.⁸ In California, "[e]xisting law prohibits discrimination in any program or activity that is conducted, operated, or administered by the state, or by any state agency, that is funded directly by the state, or that receives any financial assistance from the state, based upon specified personal characteristics."⁹ California's Fair Employment and Housing Act (FEHA) prevents employers from discriminating against employees based on the following protected classes: race, color, ancestry, national origin, religion, creed, age, mental and physical disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, pregnancy, and military or veteran status.¹⁰

Though bills have been introduced in California's past, like the Homeless Person's Bill of Rights and Fairness Act—which aimed to secure rights to shelter and essential services for all—none have expanded anti-discrimination protections to unhoused individuals.¹¹ Given the disproportionate homeless population in California, proponents of the 2012 bill suggested defining homelessness as a protected class to ensure job opportunities, combat poverty, and address discrimination.¹² A decade later, California's homeless problem persists, and little has been done to address employment discrimination against housing status.

On a single night in January 2022, 582,465 people nationwide experienced homelessness.¹³ In the United States, six out of ten individuals experiencing homelessness stay in emergency shelters, safe havens, or other housing programs, and four in ten live in unsheltered locations.¹⁴ As of 2022, 30% of all people in the United States are experiencing homelessness, and half of all unsheltered people reside in California.¹⁵ For over a decade, California has had the largest population of individuals experiencing homelessness across the country.¹⁶ For example, Los Angeles County accounts for 3% of the total U.S. population, but behind the façade of bright lights

and angels, you'll see 7% of America's unhoused population.¹⁷ Since 2020, California's overall homeless population has increased by about 6%, including a 17% increase in the homeless but sheltered category.¹⁸

Homelessness in California is a multifaceted, challenging issue stemming from many factors, including high living costs, lack of affordable housing, poverty, and job loss—especially in urban areas. A common misconception is that unhoused individuals are unemployed and uninterested in finding work.¹⁹ The blunt "go get a job" comment we've all heard before is not a fair depiction of existing barriers to employment for the houseless; instead, it's a biased ivory tower "solution" to a much more complicated issue. In reality, "[p]eople experiencing homelessness are unemployed or underemployed at disproportionately high rates, but many want to work."²⁰ Adding housing status protections can help those experiencing homelessness obtain and keep work and improve job security and economic self-sufficiency for one of California's most vulnerable populations.²¹

Attorney Golabek-Goldman's 2017 Note on nationwide employment discrimination uncovered that jobseekers are discriminated against based on their housing status.²² Homeless jobseekers attested to facing hiring discrimination if they were unable to provide a home address and if they had gaps on their resumes due to experiencing homelessness.²³ Furthermore, homeless but sheltered individuals experienced "a red flag . . . [n]o . . . a black flag on [their] resume" if employers spotted a shelter address on their application materials.²⁴ An employment specialist working with the Union Rescue Mission, a non-profit in Los Angeles, commented, "[o]nce employers find out that a job applicant lives in a homeless shelter, so many have told me that they can't hire them . . . employers refuse to engage with our residents if they don't have an address or reside on skid row."²⁵



As if applying for a job while experiencing homelessness wasn't difficult enough, many shelters implement strict regulations that do not always account for work hours conflicting with curfew and graveyard shifts.²⁶ Even worse, breaking curfew can result in the termination of an applicant's shelter stay. So, even if a person experiencing homelessness obtains a job, retaining a bed at a shelter can prove problematic if the newly employed individual's work schedule conflicts with the shelter's curfew. Given the complexity of these issues, it's time to reconsider protecting housing status in California's employment context.

III. HOMELESS DISCRIMINATION: A LEGAL FRAMEWORK

The harsh reality of homelessness is its intersection with discriminatory thoughts, practices, and laws. As it stands, housing status is not adequately protected in the employment context or otherwise, and California has increasingly enacted anti-homeless regulations. Moreover, the protective legislation California has proposed

either failed to pass or is woefully inadequate in that it does not prevent employers from hiring and firing based on housing status.

A. A Cycle of Discrimination Based on Housing Status

Though this Note is not meant to provide a detailed accounting of all issues contributing to homelessness, nor the disproportionate impact many factors have on minorities, a brief explanation of how discrimination and homelessness collide is helpful to explore the potential effects that protecting housing status will have on California's homeless crisis in an employment context.

While homelessness is widely considered an acute crisis in the United States, it is more accurately defined as a global epidemic.²⁷ According to the largest research institute devoted to homelessness in Canada, “[h]omelessness and discrimination commonly intersect, as discrimination often acts as a structural precursor to homelessness and, in turn, the experience of homelessness can lead to being discriminated against.”²⁸ This discriminatory, cyclical phenomenon is not unique to Canada. For example, in the United States, lack of adequate income, poverty, and unavailable affordable housing are some risk factors for homelessness. If we peel back another layer, these risk factors predominately impact minority groups.²⁹ According to the Los Angeles Homeless Services Authority (LAHSA), institutional racism largely contributes to the extreme over-representation of homelessness among people of color:

Black people are more likely than White people to experience homelessness in the United States . . . the impact of institutional and structural racism in education, criminal justice, housing, employment, health care, and access to opportunities cannot be denied: homelessness is a by-product of racism in America.³⁰

Poverty, for instance, largely impacts Black and Latinx groups, who have been traditionally disadvantaged compared to their white counterparts.³¹ According to the United States Census Bureau's 2019 study on Black and Hispanic poverty rates, each group continues to be over-represented in poverty relative to America's overall population.³² Black people represent approximately 13.2% of America's population, yet 23.8% of the poverty population³³ and 40% of the homeless population.³⁴ Furthermore, the Census Bureau defines “deep poverty” as living with an income below 50% of the federal poverty threshold.³⁵ Accordingly, 9.3% of Black individuals live in deep poverty.³⁶

Researchers at the Urban Institute, a non-profit research organization focusing on discrimination and poverty, found that three out of four adults in deep poverty had not worked in the past year.³⁷ With employment generally being one of the major protective factors against poverty, these statistics illustrate the concerning link between unemployment, poverty, and homelessness. “There's the old saw about how the best antipoverty program is a job. And that's true . . . the problem for the deeply and persistently poor is . . . what work they can find is often low-wage, high-turnover, and hard to sustain.”³⁸ So, researchers agree the main line of defense is employment, but what about the complex barriers to this safe haven?

Another example of discrimination based on housing status is the affordable housing crisis in America.³⁹ Under one view, homelessness is a “supply-and-demand” problem, with those who are “priced out” left worrying whether they will have a place to stay.⁴⁰ Currently, about “[s]even million extremely low-income renters cannot get affordable homes.”⁴¹ Relative to California, that means for every 100 extremely low-income renters in need of housing, only 23 homes will be available.⁴² Zoning laws, which *explicitly* discriminated on account of race until the Supreme Court intervened, arguably retain their exclusionary effect today.⁴³

In California, 76% of the residential land in L.A. County is allocated toward single-family homes.⁴⁴ The consequence is that most plots of land are reserved for one-family dwellings, not duplexes or apartment buildings, which provide more housing options for more people.⁴⁵ Similarly, access to affordable housing, an essential protective factor in preventing homelessness, is gridlocked by zoning rules that effectively perpetuate racial and income segregation in modern-day society.⁴⁶ Fundamentally, a primary reason why people are unhoused is that housing is not being built,⁴⁷ and the main reason why housing is not being built has discriminatory roots:

By restricting the construction of these multi-family, high-density units, suburban officials are effectively shutting the door on the types of new residents who might not otherwise be able to afford homes in their city. In this way, a facially neutral zoning restriction . . . has the second-order effect of preserving a community’s racial or economic homogeneity.⁴⁸

Unfortunately, these macro-level housing conditions are connected with homelessness rates.[49] Aside from concerning civil rights implications, exclusionary zoning policies “stunt the growth of affordable housing supply by limiting what housing types are acceptable to build thereby threatening housing security for low-and-extremely-low income earners [and]. . . handcuff[ing] a city’s ability to provide shelter for people experiencing homelessness.”⁵⁰ To complicate matters, many homeowners vigorously oppose proposed housing projects, fearing that their properties will lose value if low-income families move into their neighborhoods.⁵¹ In particular, protesters in



San Francisco recently stopped a development project to convert a hotel into units for homeless people.⁵² To connect the cyclical dots, discriminatory policies, and belief systems contribute to many of the risk factors of homelessness; in turn, those experiencing homelessness are faced with negative stereotypes and other barriers that prevent access to job security, economic freedom, and basic human dignity.

Overcoming employment blockades for those experiencing homelessness will require a collaborative approach. The Department of Labor’s seven-year Job Training for the Homeless Demonstration Program concluded that “a blend of assessment, case management, employment, training, housing, and support services” helps those experiencing homelessness secure and keep jobs, which in turn contributes to housing stability.⁵³ Incentivizing employers to hire applicants experiencing homelessness is incredibly challenging. The Chronic Homelessness Employment Technical Assistance Center found that many employment specialists/service providers assisting homeless persons with finding work were met with stereotypical, discriminatory views when they approached employers about hiring qualified homeless applicants.⁵⁴ As such, protecting housing status under FEHA would prevent employers from making hiring decisions based on biases about the “typical” homeless person, a crucial first step to ending homelessness.

B. Housing Status—Protections or Punishments in California?

Housing status is not protected in California under the FEHA, and individuals experiencing homelessness are effectively penalized by the state’s many anti-homeless regulations. Interestingly, the state agency that enforces California’s civil rights laws, the Civil Rights Department (CRD), formerly known as the Department of Fair Employment and Housing (DFEH), acknowledges that “discrimination and harassment can lead to housing insecurity, including homelessness.”⁵⁵ The CRD’s mission is to protect people in California from “unlawful discrimination in employment, housing, business, and state-funded programs.”⁵⁶ California law prohibits discrimination and harassment in homeless shelters, yet there is a gap in protections available once individuals experiencing homelessness step outside into the workforce.⁵⁷

Aside from a lack of protective legislation, California has implemented anti-homeless laws in the past, and new, restrictive regulations/ordinances are becoming increasingly common. For example, Kimberly Sandoval, an individual experiencing homelessness in Santa Ana, California, commented, “[t]hey should be helping us, not hindering us . . . [s]top criminalizing us, because that’s what they’re doing. *It’s not illegal to be homeless*, but everything we do is illegal.”⁵⁸ Sandoval has experienced homelessness for fifteen years and has been issued tickets for having spare bicycle parts, tents, and lawn chairs because of prejudiced city ordinances framed as public health measures.⁵⁹ She stressed that “[w]hen you have a car, you can have extra parts. We need extra tires in case we have a blowout. If I don’t have a bike, I can’t go to my appointments . . . or to work.”⁶⁰ Similarly, anti-camping laws have been introduced by senators across the state at alarming rates.⁶¹ These bills advocate for clearing homeless encampments and making it illegal to camp within a certain number of feet from “sensitive” public areas such as schools, daycare centers, and parks.⁶² However, these anti-homeless laws exacerbate homelessness because people are constantly relocated and cannot get in touch with their social workers.⁶³ One study of San Francisco encampment sweeps discovered that criminalizing homelessness is an ineffective response to the issue because it systematically limits access to housing, safety, and employment.⁶⁴

In 2020, State Senator María Elena Durazo (D—Los Angeles) introduced a Senate Bill that would provide tax credits to employers who hired applicants experiencing homelessness.⁶⁵ Durazo explained that the bill could create access to jobs and living wages for those experiencing homelessness and would encourage employers to extend a helping hand to their homeless neighbors.⁶⁶ As part of California’s 2021-2022 budget, Governor Newsom signed an Assembly Bill incorporating Senator Durazo’s tax credit plan.⁶⁷ The California Homeless Hiring Tax Credit was enacted in 2021 to serve three purposes: (1) confronting California’s homelessness emergency; (2) addressing Covid-19 related job losses, which disproportionately impacted low-income individuals; and (3) improving financial strains on small businesses recouping economic losses from the pandemic.⁶⁸ The tax credit program is available through December 31, 2026, with a total of \$30 million dollars available throughout the state annually.⁶⁹ California’s Workforce Association praised the new hiring incentives:

Today, California took a giant step forward in addressing homelessness at the local level through the community-based service providers and those that they serve by encouraging and incentivizing connecting those individuals experiencing homelessness with employers in their communities looking to hire. . . This will be an important tool for our workforce boards across the state to use when providing crucial help and services to the homeless.⁷⁰

Given its novelty, it is unclear whether this tax credit initiative is helping those experiencing homelessness obtain and keep jobs. Still, it may be an example of a positive shift toward eradicating housing status bias in the employment environment. However, while this program aims to incentivize employers to hire unhoused jobseekers, it does not prevent employers from choosing not to hire based solely on housing status or from terminating employment on the same basis.

C. Legislative Gaps—Past Solutions Proposed in California

Proponents of providing protections to individuals experiencing homelessness have advocated for two key provisions. The first is a Homeless Bill of Rights, aimed at codifying rights that were already supposed to apply to houseless persons and introducing new legal protections. The second is a “Ban the Address” policy that prevents employers from inquiring about housing status during the application process.

1. Homeless Bill of Rights—A 2012 Proposal

Homeless Bill of Rights legislation proposals challenge anti-homeless policies and guarantee protections for those experiencing homelessness; however, due to the difficulty in passing these far-reaching policies, focusing on employment-related housing status issues might be a more realistic approach for California. According to Invisible People, a non-profit focused on advocating for unhoused individuals, “[a] Homeless Bill of Rights is a response to the fact that homeless people all across the country (and the world) are subjected to greater harassment and discrimination simply because they are homeless. Because of this vulnerability, greater protections are needed.”⁷¹ Though it may seem unnecessary to extend civil liberties specifically to those experiencing homelessness, given that all citizens are supposed to be afforded fundamental human rights under

the Constitution, many laws and ordinances effectively criminalize individuals based on their housing status.⁷² Furthermore, proponents of Homeless Person’s Bill of Rights have explained that employment discrimination is a significant area of concern meant to be rectified by comprehensive legislation.⁷³ Still only three states and Puerto Rico have enacted these sweeping bills. Most state laws barely scratch the surface when it comes to protecting houseless jobseekers: “[t]here are so many problems facing the homeless. The most pressing problem is employment. For some, it is hard to get housing without employment . . . you still need an income to be able to live and work your way out of poverty.”⁷⁴

On December 3, 2012, Assemblyman Tom Ammiano proposed a homeless bill of rights in California.⁷⁵ The recommended legislation was set to *enumerate* certain human rights for those experiencing homelessness and *introduce* new rights for the unhoused, such as the right to legal counsel for violations of protections under the bill.⁷⁶ The bill would have provided several safe harbors for homeless individuals “with respect to employment, housing, health services . . . and effectively make housing status a protected class when it comes to discrimination in employment.”⁷⁷ Employers would have been prohibited from discriminating against applicants and employees based on their status as homeless, lack of a permanent address, and little income.⁷⁸ Though the bill passed the Judicial Committee, it ultimately died because of implementation cost concerns, and it was never reintroduced.⁷⁹ As such, a gap remains for legislation that guarantees rights for those without a roof over their head in California. Given the recent billion-dollar investment in California’s fight to end homelessness, protecting housing status in one category—employment—may be more cost-efficient and effective.

2. Ban the Address—A 2016 Proposal

Another approach to securing employment opportunities for people experiencing homelessness and combating poverty and its symptoms is “Ban the Address” regulations; however, this proposed solution falls short because it cannot ensure judicial remedy if an employer ultimately discriminates based on housing status.⁸⁰ In many cases, something as simple as not having a permanent address can prevent a jobseeker from obtaining employment, which exemplifies how interweaved the two issues are.⁸¹ “Ban the Address” is a concept that would



prevent employers from inquiring about an applicant’s living condition or housing history until they make a conditional offer of employment.⁸² Essentially, applicants would not be required to divulge their home address, or lack thereof, as a prerequisite to applying for work.⁸³ Undoubtedly, forced inclusion of a shelter address or social service address on application materials could be just as stigmatizing as providing no address since many employers harbor negative attitudes toward people who fall into the homeless but sheltered category.⁸⁴

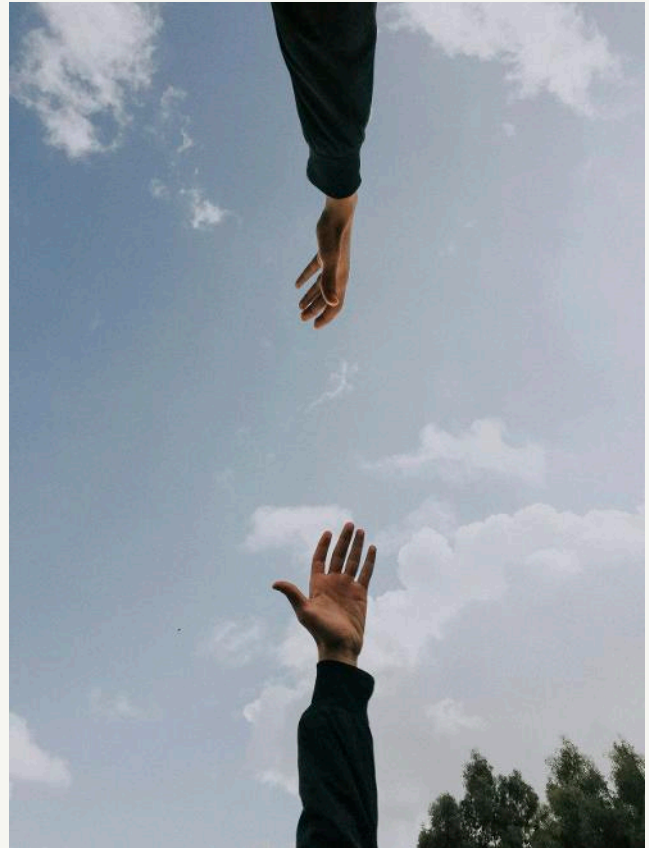
According to Rose Jordan, a 25-year-old who had experienced homelessness for the past six years at the time of her interview with Community Supported Shelters (CSS), an Oregon non-profit, not having an address to put on applications is a major roadblock.⁸⁵ “Be persistent . . . be annoying if you need to be to let the [employer] know you actually want the job . . . [because] once they find out you’re homeless, it’s you can leave the establishment now . . . they don’t even want you to come in the door.”⁸⁶ Currently, many shelters and relief programs encourage jobseekers without permanent addresses to provide non-shelter addresses, such as P.O. box numbers, on their applications.⁸⁷ Employment specialists that assist unhoused individuals with finding jobs noted that interim programs providing discounted P.O. boxes would be a positive, nonlegal solution to combating employment discrimination.⁸⁸ Still, states have not implemented programs that provide discounts on monthly P.O. boxes, and funding constraints for supportive services pose a problem.⁸⁹ Renting a P.O. box with the United States Postal Service (USPS) is unattainable for many individuals facing homelessness due to the costs.⁹⁰ Golabek-Goldman’s Note argues that the “Ban the Address” movement would provide a more “promising and permanent” solution to employment discrimination, rather than temporarily camouflaging an applicant’s homelessness status via P.O. box.⁹¹ However, banning an employer from learning of an applicant’s address until after a provisional job offer is made, without the promise of protection once this information is ascertained, is the epitome of a smokescreen.

Similarly, once a person struggling with homelessness obtains employment, there is no guarantee of fair treatment without meaningful legislation.⁹² Many individuals working with CSS expressed how they lived without stable housing and worked for free to get their foot in the door.⁹³ One man, George, 52, volunteered at an electronic recycling store six days a week for nine hours daily. After a year of unpaid work, he was hired as the lead technician, but it still took him five months to find housing he could afford.⁹⁴ Another individual experiencing homelessness, Shawn, recounted how he had better luck finding employment when companies were desperate for seasonal workers or low-wage laborers.⁹⁵ He analogized his experience to an “employment yo-yo.” Shawn explained that he would obtain employment and start to get back on his feet, but then the bottom would fall out, and he’d end up back on the streets when his employer either found out he was going through a challenging situation or wanted to lay him off to avoid paying unemployment benefits.⁹⁶

Furthermore, research shows that those who are employed and experiencing homelessness report exceptionally low annual earnings.⁹⁷ According to a 2020 study in Los Angeles County, average annual earnings for all employed, unhoused individuals was less than \$10,000 the year before experiencing homelessness.⁹⁸ This equates to only 16% of the average median income in L.A. County, the most expensive city to live in the United States.⁹⁹ The reality is that those battling homelessness are faced with an unfriendly job market consisting of temporary work, inconsistent pay, and hostile relationships with employers.¹⁰⁰ The plight of those experiencing homelessness is partially demonstrated by the fragility of our current system. While there are legitimate reasons to doubt the effectiveness of a “Ban the Address” solution standing alone, “advocacy efforts can lay a foundation for judicial victories.”¹⁰¹ In this regard, if robust “Ban the Address” policies are implemented, and housing status

is protected under the FEHA, then Californians can better determine whether employers illegally discriminated against them based on their homelessness and pursue legal action.¹⁰²

“Ban the Address” is partially modeled after the “Ban the Box” campaign, which prevents employers from asking about an applicant’s criminal conviction history.¹⁰³ While “Ban the Box” is not specifically meant to assist people without homes, incarceration and homelessness are inextricably linked. Studies have found that there is a reciprocal relationship between the two hardships.¹⁰⁴ This means that “the likelihood of both experiences is heightened by the other . . . [thus] [e]xperiencing incarceration exacerbates challenges in securing housing, increasing the likelihood of experiencing homelessness. And experiencing homelessness leaves one increasingly vulnerable to interactions with the criminal justice system.”¹⁰⁵ In this regard, it makes sense to model homelessness solutions after establishing laws that address post-incarceration employment.¹⁰⁶ The premise is that just as “Ban the Box” encourages people who have been convicted of crimes to apply for jobs without fear of prejudice on that basis, “Ban the Address” would give those experiencing homelessness the confidence to seek employment despite their housing status, and prevent automatic disqualification.¹⁰⁷ In 2018, California implemented its own version of “Ban the Box” legislation called the Fair Chance Act.¹⁰⁸ Notably, there is disagreement among advocacy groups regarding the efficacy of these “Ban the Box” laws.¹⁰⁹ Some studies indicate that “Ban the Box” policies may not truly improve employment outcomes for those with prior convictions and could increase racial discrimination.¹¹⁰ For example, some researchers contend there may be negative repercussions for Black and Hispanic men, going so far as suggesting employers may assume these men have criminal convictions, effectively denying work to qualified applicants.¹¹¹ Other advocates have countered that there is no causal relationship between policies that prevent employers from inquiring about an applicant’s criminal history and decreased hiring of minority groups.¹¹² Either way, “Ban the Address” policies would likely be more effective for the target group if housing status was also protected by law.



Since “Ban the Address” is more accurately described as a policy consideration rather than a legal remedy, one must question whether its bark is larger than its bite. Can a policy idea blocking employers from obtaining an applicant's address effectively prevent subsequent discrimination if housing status is not legally protected? Rose Jordan’s story illustrates that even if an employer makes a *conditional* job offer, it can be rescinded once the employer realizes the applicant lacks a home.¹¹³ Golabek-Goldman suggests that “Ban the

Address. . . would make clear when an employer’s rejection was based on the applicant’s housing status, providing a basis for potential judicial relief.”¹¹⁴ Golabek-Goldman's comment implicitly acknowledges that a vital piece of the puzzle would be missing without making housing status a protected characteristic under the law, leaving judicial remedy substantially moot.

IV. THE FAIR EMPLOYMENT AND HOUSING ACT (FEHA)

Considering what it means to be part of a protected class is critical to understanding why adding housing status as a protected characteristic under the FEHA would help curb discrimination in the employment domain. Most importantly, when a protected class member’s rights are violated under the FEHA, the aggrieved individual has a judicial remedy.

A. Background—What Does It Mean to Be in a Protected Class?

Protecting housing status under the FEHA would prevent employers from discriminating against applicants and employees based on their housing situation because employers could face legally punitive and socially damaging consequences. According to the National Archives Equal Opportunity Program Terminology, a “protected class” is a group protected from employment discrimination by law.¹¹⁵ A “class” is a group of people that have a common characteristic or attribute.¹¹⁶ The FEHA generally provides the same protections as Title VII but covers a broader scope.¹¹⁷ The FEHA is codified in California Government Code Section 12900 et seq. and covers employers with five or more employees. The FEHA prevents a covered employer from discriminating against employees based on the protected characteristics outlined in the statute. The protections apply to employers’ decisions about hiring, promotion, pay benefits, terms of employment, layoffs, and other aspects of employment.¹¹⁸ The California CRD enforces anti-discrimination and harassment laws in the employment context.¹¹⁹

If an applicant or employee experiences discrimination because of a protected characteristic, then the employee can bring a suit under either a disparate treatment or disparate impact theory.¹²⁰ To prove a disparate treatment claim, the plaintiff must prove the following elements: (1) plaintiff was a member of a protected class; (2) plaintiff was qualified for the position or was competently performing the position; (3) plaintiff suffered an adverse employment action (including refusal to hire); and (4) the action occurred under circumstances suggesting a discriminatory motive.¹²¹ Then, if plaintiff meets their burden, the employer must respond with a legitimate, nondiscriminatory reason for its actions.¹²² Last, the burden shifts back to the plaintiff to establish that the employer’s articulated reason was a “pretext” for unlawful discrimination.¹²³

Similarly, an employee or a jobseeker could bring a FEHA suit under a disparate impact theory if they believe they were effectively discriminated against based on a protected characteristic.¹²⁴ “[D]isparate-impact claims involve employment practices that are facially neutral in their treatment of different groups but in fact fall more harshly on one group than another and cannot be justified by business necessity.”¹²⁵ Unlike in disparate treatment cases, the plaintiff does not have to establish discriminatory intent.¹²⁶ A *prima facie* case requires

showing: (1) the existence of the employer's practice or policy; (2) the policy has significant adverse effects on a person or a protected class; (3) the impact of the policy is on terms, conditions, or privileges of employment of the protected class; and (4) the employee population, in general, is not affected by the policy to the same degree.¹²⁷

If an applicant or an employee believes they faced employment discrimination because of a protected characteristic, they have three years from the date of the alleged unlawful practice to file a complaint.¹²⁸ A claimant must exhaust their administrative remedies by filing their grievance with the CRD and are also obliged to obtain a Right-to-Sue notice before filing a lawsuit in court.¹²⁹ When a complaint is filed, the CRD evaluates the merits of the case and determines whether to conduct an investigation.¹³⁰ A successful claimant may be entitled to an injunction prohibiting the unlawful practice, access to the job opportunity, and damages.¹³¹ Although this Note is not meant to be a blueprint for filing employment discrimination complaints, this process is unique in that a state agency may sue on behalf of a mistreated employee or job applicant.¹³² For those experiencing homelessness, this may be an attractive, less costly remedial process.

B. Current Efforts to Protect Those Experiencing Homelessness in California

California is considering adding housing status as a protected category under anti-discrimination laws, and expanding protection under the FEHA is imperative to ensure equal opportunities in employment for those experiencing housing insecurity. Assemblymember Isaac Bryan¹³³ recently authored and introduced AB 920—Anti-Discrimination of People Experiencing Homelessness.¹³⁴ AB—920 would add housing status to the list of protected categories under Cal. Gov't Code Section 11135¹³⁵, California's anti-discrimination statute, and further define it under Cal. Gov't Code Section 12926.¹³⁶ The bill defines "housing status" as the status of experiencing homelessness.¹³⁷ Representative Bryan noted that "since its passage, the [anti-discrimination] statute has been amended multiple times to expand the list of protected categories."¹³⁸ Assemblyman Bryan stated that the widespread existence of discrimination against the unhoused contravenes California's overarching goal of providing safe housing and care for everyone, including our neighbors experiencing homelessness.¹³⁹ He argues that current laws do not adequately protect the rights of one of California's most vulnerable groups:

AB 920 will protect unhoused people from being targeted, persecuted, or denied access to programs and benefits by the state, or a state-funded agency simply because of their housing status. Adding housing status to California's anti-discrimination law advances the civil rights of people who are unfairly targeted because they are experiencing homelessness.¹⁴⁰

The status of AB 920 is currently unknown. On March 28, 2023, the Assembly passed and re-referred the bill to the Committee on Appropriations.¹⁴¹ On April 26, 2023, the bill was referred to Suspense File, where its fiscal impact will be assessed.¹⁴² As of May 12, 2023, AB 920 was set for a hearing on May 18, 2023.¹⁴³

For many reasons Assemblyman Bryan outlined in his proposal, housing status should also be explicitly added as a protected category under California’s FEHA. Most recently, California has revised the FEHA to include protection for hairstyles historically associated with race and reproductive health decision-making.¹⁴⁴ Adding housing status as the next protected characteristic under Cal. Gov’t Code Section 12940 would further California’s goals of preventing discrimination in the workplace and provide an avenue for redress when it occurs.¹⁴⁵

C. Rationale for Adding Housing Status as a Protected Class under the FEHA

If California added housing status as a protected characteristic under the FEHA, then aggrieved applicants or employees would have the opportunity to stand up against unfair treatment based on their experience with homelessness.¹⁴⁶ Under a disparate treatment theory, an unhoused individual would be able to file a complaint with the CRD if they experienced discrimination in hiring, training, compensation, or terms, conditions, and privileges of employment, including termination, because of their housing status.¹⁴⁷ For example, George, the individual receiving services from CSS, may have been better protected from exploitation if housing status was a covered characteristic under employment discrimination laws in his state. If his employer classified him as a volunteer rather than an employee because of his housing status and then refused to pay him for a year of full-time work, that may be considered discriminatory compensation on the basis of his homelessness.¹⁴⁸ To attorney Golabek-Goldman’s point, if housing status was protected and an employer was prohibited from inquiring about a job seeker’s home address in the early stages of the application process, made a conditional offer of employment and then rescinded the offer after learning of the applicant’s housing status, then the applicant discriminated against could seek remedy under the FEHA.¹⁴⁹ As such, shielding the unhoused from discrimination through legal means would transcend the protective effects of “Ban the Address” policies and pave the way for meaningful redress.¹⁵⁰ Even if courts were receptive to disparate-impact claims arising out of “Ban the Address” measures, discrimination based on houselessness impacts more stages of employment than the initial application period.



Similarly, many roadblocks to employment reported by people experiencing homelessness could be remedied if housing status was protected. It would be illegal for an employer to write off an applicant with gaps on their resume due to homelessness, and it would be discriminatory to refuse to hire based on negative stereotypes against the homeless population, such as poor reliability, cleanliness, substance abuse, and mental illness.¹⁵¹ In the same vein, job seekers experiencing homelessness may not refrain from seeking out

employment if they knew they could no longer be discriminated against based on their circumstances. Employers would also be more inclined to assess a candidate based on their qualifications, not preconceived notions of what it means to be homeless and how that might impact the workplace.¹⁵² Notably, the FEHA protects employees and job applicants who are perceived to have a protected characteristic.¹⁵³ So, job applicants can initiate a complaint if they believe that they were denied an opportunity or eliminated from candidacy based on their *perceived* housing status.¹⁵⁴ Drawing on the “Ban the Box” backlash,¹⁵⁵ an employer could not statistically discriminate against groups with higher rates of homelessness because *perceived* homelessness is equally protected. For example, if an employer categorically refused to hire transgender employees or Black males due to disproportionate homelessness rates associated with these groups, the employer would arguably be discriminating based on housing status, in addition to race, and gender identity.¹⁵⁶ Moreover, if an employer could face civil penalties and other consequences for making employment decisions based on housing status, that would ultimately deter the employer from engaging in discriminatory conduct.¹⁵⁷

V. OTHER JURISDICTIONS’ APPROACHES TO PROTECTING HOUSING STATUS

By examining other jurisdictions’ approaches to protecting housing status, California can implement comprehensive legislation with meaningful protections that address the employment challenges that individuals experiencing housing insecurity face.

A. *Puerto Rico’s Rights for the Unhoused—Good Intentions, Bad Implementation.*

The pitfalls in Puerto Rico’s Homeless Bill of Rights illuminate the importance of *judicially enforceable* protections. Puerto Rico was the first United States territory to pass homeless rights legislation.¹⁵⁸ Puerto Rico enacted its homeless bill of rights in 1998, which included positive¹⁵⁹ and negative¹⁶⁰ rights for those experiencing homelessness.¹⁶¹ Puerto Rico’s model is especially interesting because its Constitution explicitly recognizes unhoused individuals as deserving of rights.¹⁶² Despite these Constitutional protections, Puerto Ricans without homes fell victim to abuse and discrimination throughout the 1990s.¹⁶³ In response, Puerto Rico passed Act 250 to “provide services for the homeless, [and] to implement a well-integrated public policy that will allow these persons to meet their basic needs and have their rights respected.”¹⁶⁴ The main goals of the legislation included improving access to housing, healthcare, employment, income, and government services for unhoused Puerto Ricans.¹⁶⁵

During the years following the enactment of Puerto Rico’s Homeless Bill of Rights legislation, many amendments were made to improve implementation and enforcement.¹⁶⁶ Albeit, none of the acts were intended to be enforced by the judiciary.¹⁶⁷ One proposed bill noted that despite the extensive legislation previously passed, “little has been achieved” in the fight against homelessness, which illustrates the importance of judicial enforceability.¹⁶⁸ California has already established administrative agencies tasked with enforcing employment anti-discrimination laws, so adding housing status as a protected category would not pose as many implementation concerns as Puerto Rico’s model. Furthermore, individuals experiencing homelessness in

California can file claims with the CRD, which provides access to legal resources for vulnerable populations.¹⁶⁹ Of course, adding a new protected category could lead to an increase in investigations, alternative dispute resolution, prosecution, and enforcement efforts facilitated by the CRD, calling for increased funding.¹⁷⁰

B. Rhode Island's Homeless Bill of Rights—Is it Meaningless?

In 2012, Rhode Island passed a Homeless Bill of Rights, making it the first state to enact wide-ranging protections for its unhoused people; however, its protections are severely underutilized.¹⁷¹ Rhode Island's bill establishes that individuals experiencing homelessness have the right to be free from discrimination during the entire employment process and cannot be denied opportunities due to lack of a permanent address.¹⁷² Notably, the effect of Rhode Island's Homeless Bill of Rights would likely be similar to California's protections under the FEHA because Californians experiencing homelessness would also be shielded from discrimination based on "housing status."¹⁷³ Furthermore, in both states, claimants could seek injunctive and declaratory relief, damages, and attorney's fees for violations of anti-discrimination employment laws.¹⁷⁴ Opponents of the Homeless Bill of Rights in Rhode Island were concerned that protecting housing status would open the floodgates to litigation.¹⁷⁵ In reality, no actions have been brought under Rhode Island's Homeless Bill of Rights to date.¹⁷⁶ Despite the lack of litigation, Rhode Island Homeless Bill of Rights advocates contend the legislation is not meaningless:

The bill is both an educational tool to raise awareness of the ways in which people experiencing homelessness have been discriminated against and a legal tool to enforce people's rights . . . the laws are important because we currently have no other recourse in our fight to stop discrimination against people experiencing homelessness. Even if few lawsuits are brought, it is vital that these laws are in place to keep the issue visible.¹⁷⁷

Perhaps the underuse of the laws protecting against housing status discrimination diffuses California's budget concerns.¹⁷⁸ In any event, working with shelters and employment agencies assisting those experiencing homelessness in California will be a critical component to effectively enforcing housing status rights under the FEHA.

C. Finding the Balance—Illinois' Legislation is Largely Moot and Connecticut's Law Lacks Remedial Mechanisms

California's housing status protections must cover individuals seeking and maintaining employment and provide remedial measures in the form of damages. Shortly after Rhode Island enacted its Homeless Bill of Rights, Illinois and Connecticut followed suit.¹⁷⁹ Illinois' legislation is quite similar to Rhode Island's laws, but offers less protection.¹⁸⁰ For example, Illinois's provisions do not explicitly protect job seekers experiencing homelessness.¹⁸¹ Given the barriers that unhoused job seekers face, Illinois's approach to safeguarding its homeless population may be moot.¹⁸² Connecticut's definition of homeless is more far-reaching than any of the jurisdictions previously discussed because it provides protections for individuals imminently at risk of homelessness.¹⁸³ California's proposed definition of "housing status" under AB 920 is supposed to mirror the definition of "experiencing homelessness" under California's Health and Safety Code.¹⁸⁴ Since the California

Health and Safety Code is modeled after the Federal Housing and Urban Development Code, individuals or families who will imminently lose their primary nighttime residency would also be protected under California's proposed definition.¹⁸⁵ As such, it is possible that Connecticut and California would grant more expansive protections to individuals who "face discrimination due to a recent history of residential instability."¹⁸⁶ However, Connecticut's protections against employment discrimination for the unhoused lack teeth¹⁸⁷ The legislation does not specify enforcement provisions because lawmakers were concerned with the costs of frivolous lawsuits.¹⁸⁸ In turn, with no threat of sizable damages, the bill may lack a deterrent effect for employers.¹⁸⁹



VI. CONCLUSION: THE POTENTIAL SOCIETAL IMPACT OF PROTECTING HOUSING STATUS UNDER THE FEHA

Since work opportunity is a crucial protective factor in preventing homelessness, prohibiting employers from discriminating against job applicants or current employees based on their housing status could help those experiencing homelessness move toward economic self-sufficiency. Increasing employment opportunities for the unhoused would not only combat the effects of poverty but also have the potential to decrease the rate of homelessness over time.

Moreover, there is a social benefit to legally disallowing employment discrimination on the basis of housing status. Providing a means to judicial remedy would likely deter employers from basing employment decisions on prejudicial stereotypes associated with homelessness. Regardless of housing status, job seekers would be judged by their qualifications rather than their circumstances. Adding housing status as a protected characteristic under the FEHA promotes equal treatment and social justice while acknowledging the plight of those without homes. Combining previous policy proposals, such as "Ban the Address," with a legal remedy under the FEHA would more effectively address and prevent discrimination based on housing status and ultimately provide refuge for those experiencing homelessness. California should strive to be a society where individuals can obtain and keep jobs without compromising their dignity; protecting housing status under FEHA is the first step toward achieving that goal.

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⁵ See *id.* at 1788.

⁶ See Sarah Golabek-Goldman, *Op-Ed: Homeless Shouldn't Face Job Discrimination Just Because They Lack an Address*, L.A. Times (Oct. 10, 2016, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-golabek-goldman-homeless-address-job-application-20161010-snap-story.html> [hereinafter *Op-Ed*]; see also, *Fair Chance Act: Criminal History and Employment*, Cal. Civ. Rts. Dep't (Nov. 2022),

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⁷ See *Op-Ed*, *supra* note 6.

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¹⁰ Cal. Gov't Code § 12940 (Deering, 2023); see also *Preventing Unlawful Workplace Discrimination in California*, SHRM (Jan. 26, 2023), <http://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/californiapreventingunlawfulworkplacediscrimination.aspx> (noting that more employers are covered under FEHA than Title VII and that overall, California protects more categories from discrimination in the employment context).

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[http://www.nationsonline.org/oneworld/US-states-population.htm#:~:text=98%25%20of%20the%20US%20population,a%20state\)%20and%20Rhode%20Island](http://www.nationsonline.org/oneworld/US-states-population.htm#:~:text=98%25%20of%20the%20US%20population,a%20state)%20and%20Rhode%20Island) (noting that California accounts for approximately 12% of America's population); cf. Sousa et al., *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress Part 1: Point-In-Time Estimates of Homelessness*, The U.S. Department of Housing and Urban Development (Dec. 2022), <http://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf> [hereinafter *2022 Point-In-Time Estimates of Homelessness*] (observing that about 30% of all homeless persons in United States are located in California).

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¹⁶ See *2022 Point-In-Time Estimates of Homelessness*, *supra* note 12 (illustrating that approximately 171,521 people in California experienced homelessness on any given night last year).

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¹⁸ See *2022 Point-In-Time Estimates of Homelessness*, *supra* note 12.

¹⁹ See Golabek-Goldman *supra* note 2, at 1791.

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²⁴ *Op-Ed*, *supra* note 6.

²⁵ *Id.*

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⁸⁵ *Challenges of Getting a Job*, *supra* note 84.

⁸⁶ *Id.*

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⁸⁸ See *id.* at 1815.

⁸⁹ See *id.* at 1813.

⁹⁰ See *id.*

⁹¹ See *id.* at 1818–19.

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⁹⁴ See *id.* (questioning how many people, regardless of housing status, can or would spend a year working for free).

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¹¹⁰ See *id.*

¹¹¹ See *id.* (insinuating that some researchers believe “Ban the Box” leads employers to resort to statistical discrimination—refusing to hire certain “demographics [that] are more likely to include people with criminal backgrounds.”).

¹¹² See Golabek-Goldman, *supra* note 2 at 1819.

¹¹³ See *Challenges of Getting a Job*, *supra* note 84.

¹¹⁴ See Golabek-Goldman, *supra* note 2 at 1793.

¹¹⁵ *EEO Terminology*, Equal Emp. Opportunity Program (Oct. 26, 2021), <http://www.archives.gov/eo/terminology.html#p>.

¹¹⁶ *Class*, Black’s Law Dictionary (11th ed. 2019).

¹¹⁷ Hon. Ming W. Chin et al., *A. Title VII and the California Fair Employment and Housing Act*, Cal. Prac. Guide Emp. Litig. Ch. 7-A(1) (Mar. 2023), <http://1.next.westlaw.com/Document/Ic519de70c1d111e4846ed88a7a10993e/View/FullText.html?ppcid=b0335380a83944a1b80f24d10cf06f4f&>

originationContext=documenttoc&transitionType= CategoryPageItem&contextData=(sc.Category)(noting that California protects the following characteristics: age, ancestry, color, creed, disability, genetic information, gender expression, gender identity, marital status, medical condition, military or veteran status, national origin, race, religion, sex, gender, pregnancy, sexual orientation, and hair texture and styles).

¹¹⁸ Cal. Gov. Code, §§ 12926, 12940, 12945, 12945.2.

¹¹⁹ *California's Civil Rights Agency*, Cal. Civ. Rts. Dep't, <http://calcivilrights.ca.gov> (last visited May 9, 2023).

¹²⁰ See Hon. Ming W. Chin et al., *supra* note 117 at Ch. 7-A(5).

¹²¹ See e.g., *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); see also *Reynaga v. Rosenberg Forest Prod.*, 874 F.3d 678, 691 (9th Cir. 2017) (noting that the elements for a *prima facie* case of employment discrimination under a disparate treatment theory are the same under the FEHA as under Title VII).

¹²² See *McDonnell Douglas Corp.*, 411 U.S. at 802–04.

¹²³ See *id.*

¹²⁴ See Hon. Ming W. Chin et al., *supra* note 117 at Ch. 7-A(6)(c).

¹²⁵ *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52–53 (2003).

¹²⁶ See *id.*; see e.g., *Int'l Bhd. Of Teamsters v. United States*, 431 U.S. 324, 335 (1977); see also *Guz v. Bechtel Nat'l Inc.*, 8 P.3d 1089 (Cal. 2000).

¹²⁷ See *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1488 (9th Cir. 1993).

¹²⁸ See *Failure to File Timely Administrative Complaint*, Jud. Council of Cal. Civ. Jury Instructions No. 2508 (Dec. 2022), http://www.courts.ca.gov/partners/documents/Judicial_Council_of_California_Civil_Jury_Instructions.pdf; see also Cal. Gov. Code § 12960(e)(5); see, e.g., *Complaint Process*, Civ. Rts. Dep't <http://calcivilrights.ca.gov/complaintprocess/#:~:text=In%20employment%20cases%2C%20you%20must> (last visited May 11, 2023) [hereinafter *Complaint Process*] (explaining that the statute of limitations for most other cases is one year from the date of harm, but in employment cases, you have three years).

¹²⁹ See *Complaint Process*, *supra* note 128.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² See *id.*

¹³³ See *Isaac Bryan Biography*, Cal. State Assembly, <http://a55.asmdc.org/biography> (last visited May 11, 2023) (describing how Isaac Bryan represents California's 55th Assembly District and serves as the Chair of the Assembly's first Select Committee on Poverty and Economic Inclusion).

¹³⁴ See Bryan, *supra* note 21.

¹³⁵ See *id.*; see also Kevin Kish, *2019 Annual Report*, Dep't of Fair Emp. and Hous.21 (2019) <http://calcivilrights.ca.gov/wp-content/uploads/sites/32/2020/10/> (noting that California's DFEH, now known as the CRD, has jurisdiction to investigate and prosecute violations of Cal Govt. Code § 11135 *et seq.*).

¹³⁶ See Bryan, *supra* note 21.

¹³⁷ See Cal. Assemb. B. 920 (2023-2024); see also *Assemb. B, Fiscal Analysis: Hearing on AB 920 Before the Assemb. Comm. on Appropriations 1* (Cal. 2023) [hereinafter *Fiscal Analysis: Hearing on AB 920*].

¹³⁸ See Bryan, *supra* note 21 (noting that in 2019, the Crown Act was enacted to amend Cal. Gov't Code § 12926, which added hair to the list of protected categories in order to prevent discrimination based on hairstyles associated with race).

¹³⁹ See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See *Bill History*, Cal. Legislative Information (Apr. 26, 2023), http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240AB920.

¹⁴² See *id.*; see also *Senate Appropriations Committee FAQ's*, Cal. State Senate, [http://sapro.senate.ca.gov/FAQs#:~:text=What%20is%20Suspense%](http://sapro.senate.ca.gov/FAQs#:~:text=What%20is%20Suspense%20) (explaining that when the Committee indicates a bill's fiscal impact meets a certain threshold requiring referral to the Suspense File, a separate hearing

is held to determine the effect on funding).

¹⁴³ See Email from Cal. Legis. Info., to Kaitlyn Spear, *Tracking Notification: AB-920 Measure Set For Hearing* (May 12, 2023, 10:11 PM) (on file with author).

¹⁴⁴ See Cal. Gov't Code § 12926(x)(y); see e.g., Cal. Gov't Code § 12940(a); see also *2022 Legislative Summary*, C. R. Dep't, 2–3 <http://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/2022-Legislative-Summary.pdf> (last visited May 11, 2023).

¹⁴⁵ See Bryan, *supra* note 21; see also Rankin, *supra* note 79 (advocating for increased protection by the judiciary due to the remedial barriers that those experiencing homelessness face). Homeless people generally face significant obstacles to secure social change through the courts or through the legislative process. Courts often punt on matters of social or economic legislation because judges “presume any problems will be remedied within the political process.” This defense creates a “dialogic default” because certain vulnerable groups are not protected by the judiciary, and “they also lack the types of resources typically required for effective political mobilization to pursue protection.” . . . These challenges can impede the proposal of homeless rights in the first place, their implementation, or their enforcement. Rankin, *supra* note 79.

¹⁴⁶ See Cal. Gov't Code § 12940 (Deering, 2023).

¹⁴⁷ See *id.*

¹⁴⁸ See Cal. Gov't Code § 12940(c) (Deering, 2023)(codifying that it is an unlawful employment practice to discriminate against any person “in any apprenticeship or training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person” because of any protected characteristic); see also *Challenges of Getting a Job*, *supra* note 84.

¹⁴⁹ See Cal. Gov't Code § 12940 (Deering, 2023); see also Golabek-Goldman, *supra* note 2 at 1793.

¹⁵⁰ See Golabek-Goldman, *supra* note 2 at 1837 (describing “Ban the Address” as a precursor to legal reform and judicial relief).

¹⁵¹ See *id.* at 1791–92.

¹⁵² See *id.* at 1858 (revealing many individuals experiencing homelessness recounted that during job interviews, employers who noticed they lived in a homeless shelter would ask “accusatory questions about drug and alcohol use” when there was no evidence that the applicant was using drugs at all).

¹⁵³ See Hon. Ming W. Chin et al., *supra* note 117 at Ch. 7-A(3)(b)(3).

¹⁵⁴ See *id.*

¹⁵⁵ See Golabek-Goldman, *supra* note 2 at 1858; see also *supra* notes 109–112 and accompanying text.

¹⁵⁶ See Golabek-Goldman, *supra* note 2 at 1858; see e.g., *supra* notes 109–112 and accompanying text; see also Ellie Swain, *The Link Between Homelessness and Transgender People*, Invisible PEOPLE (Oct. 20, 2020), <http://invisiblepeople.tv/the-link-between-homelessness-and-transgender-people/> (describing how transgender individuals are more likely to become homeless than cisgender people due to higher rates of eviction, poverty, and unemployment).

¹⁵⁷ See *Complaint Process*, *supra* note 128 (listing civil penalties, emotional damages, and punitive damages as possible outcomes of an employment discrimination case under the FEHA).

¹⁵⁸ See Rankin, *supra* note 79.

¹⁵⁹ See *id.* at 395–96 (noting that “positive rights” are often considered economic and social rights because they create new government obligations or actions. So, an individual experiencing homelessness may be afforded the positive right of additional workforce training).

¹⁶⁰ See *id.* at 395, 406 (explaining that civil and political rights are often referred to as “negative rights” because they recognize that individuals experiencing homelessness have the right to be left alone. For example, a ban on anti-homeless construction would be considered a negative right because it ensures that the unhoused can use and move freely in public spaces. Similarly, the right to be free from employment discrimination based on housing status would be an example of an enumerated negative right).

¹⁶¹ See *id.* at 399.

¹⁶² See *id.* at 400 n. 84 (“The Puerto Rico Constitution specifically recognizes ‘the right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing, and medical care, and necessary social services.’ . . . The Constitution also specifically

prohibits discrimination on the basis of ‘social condition.’”).

¹⁶³ See *id.* at 400.

¹⁶⁴ See *id.* (observing the uniqueness of Puerto Rico’s homeless bill of rights, which created an administrative group—the Department of the Family—to coordinate with government agencies, the private sector, and non-profits and provide solutions to the homeless crisis in the area).

¹⁶⁵ See *id.*

¹⁶⁶ See *id.* at 401.

¹⁶⁷ See *id.* at 400–04 n. 124 (cautioning that while judicial enforceability has advantages, those experiencing homeless must also have access to counsel and the legal process).

¹⁶⁸ See *id.* at 403–04.

¹⁶⁹ See *Complaint Process*, *supra* note 128.

¹⁷⁰ See e.g., *Fiscal Analysis: Hearing on AB 920*, *supra* note 137 at 1–2 (explaining that the costs resulting from CRD’s enforcement of anti-discrimination laws depend on the number of complaints submitted and the staffing required to meaningfully investigate and reconcile complaints of discrimination).

¹⁷¹ See Golabek-Goldman, *supra* note 2 at 1837–38.

¹⁷² See Golabek-Goldman, *supra* note 2 at 1838–39; see also 34 R.I. Gen. Laws § 34-37.1-3 (“A person experiencing homelessness: [h]as the right not to face discrimination while seeking or maintaining employment due to his or her lack of a permanent mailing address, or his or her mailing address being that of a shelter or social service provider.”).

¹⁷³ See Golabek-Goldman, *supra* note 2 at 1839 (noting that Rhode Island prohibits employment discrimination based on “housing status,” defined as “not having a fixed or regular residence, including . . . living on the streets or in a homeless shelter or similar temporary residence.”).

¹⁷⁴ See Rankin, *supra* note 79 at 407; see also *Complaint Process*, *supra* note 128.

¹⁷⁵ See *Rhode Island First State to Pass Homeless Bill of Rights*, SAMHSA (Apr. 6, 2022), <http://www.samhsa.gov/homelessness-programs-resources/hpr-resources/rhode-island-homeless-bill-rights>.

¹⁷⁶ See *id.*

¹⁷⁷ *Id.*

¹⁷⁸ See e.g., *Fiscal Analysis: Hearing on AB 920*, *supra* note 137 at 1–2.

¹⁷⁹ See Rankin, *supra* note 79 at 404.

¹⁸⁰ See Golabek-Goldman, *supra* note 2 at 1838.

¹⁸¹ See 775 Ill. Comp. Stat. Ann. 45/10(a)(3) (Lexis) (codifying that a person experiencing homelessness shall not “face discrimination while *maintaining* employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider.”) (emphasis added).

¹⁸² See Golabek-Goldman, *supra* note 2 at 1839 (noting that a homeless person in Illinois subjected to employment discrimination in the application process has no legal recourse and arguing that protecting individuals *seeking* and *maintaining* employment is “essential to creating equal opportunity for homeless individuals to obtain a stable position.”) (emphasis added).

¹⁸³ See *id.*

¹⁸⁴ See Cal. Assemb. B. 920 (2023-2024); see also Cal. Health and Safety Code § 50675.15 (2022) (noting that “experiencing homelessness” means the same as “homeless” and “homelessness” under the Federal Housing and Urban Development definitions of those terms).

¹⁸⁵ 24 C.F.R. § 578.3 (2023) (defining the meaning of homeless).

¹⁸⁶ See Golabek-Goldman, *supra* note 2 at 1839–40.

¹⁸⁷ See *id.* at 1840 (criticizing how Connecticut’s law does not specify recoverable money damages).

¹⁸⁸ See *id.*

¹⁸⁹ See *id.*